Court No. 2

Writ Petition No. 243 of 2003 (M/B)

R.B.N.Sugar Mills Ltd. ……. Petitioner

Vs.

Union of India and others …… Respondents

Writ Petition No. 503 of 2003 (M/B)

Laxmi Sugar Mills Ltd. Sugar Mills Ltd
And one another . ……. Petitioner

Vs.

Union of India and others …… Respondents

Writ Petition No. 401 of 2003 (M/B)

Uttam Sugar Mills Ltd. …….. Petitioner

Vs.

Union of India and others …… Respondents

Writ Petition No. 242 of 2003 (M/B)

Bajpur Co-operative Sugar
Factory Ltd. ……. Petitioner

Vs.

Union of India and others …… Respondents

Writ Petition No. 496 of 2002 (M/B)

M/s Kichha Sugar Comp. Ltd. …… Petitioner

Vs.

Union of India and others …… Respondents

Writ Petition No. 164 of 2003 (M/B)

Rai Bahadur Narain Singh
And another ……. Petitioner

Vs.

Union of India and others …… Respondents

Writ Petition No.438 of 2002 (M/B)

Uttam Sugar Mill and another ……. Petitioner

Vs.

Union of India and others …… Respondents

Writ Petition No. 645 of 2002 (M/B)

M/s Doiwala Sugar Company Ltd. ……. Petitioner

Vs.

Union of India and others …… Respondents

Writ Petition No. 44 of 2003 (M/B)

M/s Kishan Sehkari Mills Ltd. ……. Petitioner

Vs.

Union of India and others …… Respondents

Writ Petition No. 240 of 2003

Kishan Sahkari Chini Mills Ltd. ……. Petitioner

Vs.

Union of India and others …… Respondents

Writ Petition No.108 of 2003

Kishan Sahkari Chini Mills Ltd ……. Petitioner

Vs.

Union of India and others …… Respondents

Hon. P.C. Verma,A.C.J.
Hon. Irshad Hussain,J.

Heard Sri R.K. Raizada, Sri C.K. Sharma, Sri T.A.Khan, Sri Manoj Tewari, Sri Navneet Kaushik for the petitioners and Sri B.C.Pande & Sri G.S. Bisht, learned counsel for the Union of India.

All the aforesaid writ petitions are interconnected, therefore, they are being disposed of by this common judgment and order.

In this bunch of petitions, petitioners have come up with the grievance that their monthly quota is not being released according to their respective production capacity. After hearing learned counsel for the petitioners as well as learned counsel for the Union of India, we provided for release of 50% of the stock of their sugar lying in their stocks.

In compliance of our orders, release orders were issued. But on account of various problems, the sugar could not be sold within the stipulated time. Therefore, some of the petitioners have applied for a direction to the director (sugar) to extend the time for sale of free sale sugar released to them. An application to recall our interim orders directing release of the sugar has been moved by Union of India. On

the application for recall of the orders, we have heard Sri B.C. Pande, learned standing counsel for the Union of India. Sri Pande has drawn our attention to clause 4 and 5 of the Sugar (Control) Order, 1966 dated 10.6.1966 which reads as thus:

4. **Power to restrict sale, etc., of sugar by producers,-** The Central Government may direct that no producer shall sell or agree to sell or otherwise dispose of, or deliver any kind of sugar or remove any kind of Sugar from the bonded godowns of the factory in direction issued in writing by the Central Goven ment:

   Provided that this clause shall not affect the pledging of such sugar by any producer in favour of any scheduled bank as defined in clause (e) of Section 2 of rthe Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and no such bank shall sell the sugar pledged to it except under and in accordance with a direction issued in writing by the Central Government.

5. **Power to issue directions to producers and dealers-** The Central Government may, from time to time, by general or special order, issue to any producer or recognized dealer, or any class of producers or recognized dealers, such directions regarding the production, maintenance of stocks, storage, sale grading, packing, marking, weignment, disposal, delivery and distribution of any kind of sugar as it may deem fit.

Clause 4 of the Sugar Control order was struck down as being ultra vires as High Court of Allahabad foud it to be ultra vires of Article 19(1)(g) of the Constitution of India. After the judgment of Allahabad High Court, the provisions contained in clause 4 has been revived by Notification dated 2.6.2003 amending the Essential Commodities Act. Since the vires of the provisions contained in the gazette Notification, which revived the provision, that was struck down, has not been challenged before us, therefore, the power lies with the Central Government to regulate the sale of the sugar under this notification dated 2.6.2003 read with clause 4 of the Control Order, 1966.

In exercise of powers conferred in clause 5 of the Control Order, the Government of India issued G.O. dated 9.5.1994 from the Ministry of Food, Order, No.G.S.R. 442 (E), dated May 09, 1994, Published in the Gazsette of India, Extra, Part II, Section 3(i). The relevant clause 1 and 2 of the aforesaid G.O. is extracted as thus:

" In exercise of poers conferred by Clause 5 of Sugar)Control) Order, 1996 and in Supersession of the Order of the Government of India of the Ministry of Food No. G.S.R. 842 (E)/ Ess. Com./Sugar dated 30.10.1992, the Central Government hereby directs that no producer shall:

(i) Subject to the availability of sugar covered by an Order permitting such sale, refuse to sell sugar to a recognized dealer; or

(ii) Sell and dispatch less than monthly quota of sugar released to him for sale by the monthly order, within a period specified therein."

(iii) …….

Sri B.C. Pande, learned counsel for the Government of India, submitted that release orders have been issued according to the Government Order, but the petitioners did not sell it within the time stipulated in the release order and did not submit their fair statement of stock position. Therefore, the Government of India though issued the release order, but could not issue it every month which resulted in issuance of the release order for accumulated two or three months. May it be as stated by the parties, but statutory requirement is for release of free sale/ non-levy sugar for sale, by Government of India every month, but in turn, through release orders, the payment is to be ensured of sugar cane price to sugar cane growers as well as dues to workmen, etc, engaged in the factory and further to meet the financial liability of the factory. In the regulatory powers vested with the Government, the Government has to take necessary action to ensure the timely sale of the sugar every month by the sugar factories, but the Government of India can not delay the release order beyond a month in view of the provisions for the regulation of sale of sugar quoted above. We have found that there is no release order month to month by the Government of India. The Government of India is not acting in conformity with the Government Order dated 9.5.1994. Therefore, the Government of India is directed to strictly act in accordance with the Government order dated 9.5.1994 by releasing sugar every month as per stock position as submitted by sugar factory every month and sell them. The Director (Sugar) shall also extend time or pass fresh relese order. However, it is made clear that in pursuance of our earlier orders, those sugar factories which have been issued release order, but they have not been able to sell their sugar

within stipulated time, their allotment order shall stand lapsed and fresh release order shall be issued.

Accordingly, it is directed that in the Month of June, if release order is not issued, that shall be issued within three days from the date of production of certified copy of this order, giving them atleast one month time for sale of the sugar. Likewise, for every month release order shall be issued giving one month time for sale taking into account stock position and production of each factory so that sugar produced by each factory in the crushing season is sold subject to the maintenance of minimum buffer stock, within a year. By every year, we mean every crushing year. It is hereby clarified that the release order already issued under the orders of this Court shall also be taken into account at the time of fixing of monthly quota for further release of the remaing stock of the non levy sugar in the factory.

With the aforesaid direction, the writ petitions are finally disposed of.

Irshad Hussain,J. **(P.C. Verma,A.C.J.)**

Dt. 12.6.2003

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